

**STATE OF RHODE ISLAND  
DEPARTMENT OF HEALTH**

**In the matter of:     Memorial Hospital of Rhode Island**

**PETITION FOR DECLARATORY RULING**

United Nurses and Allied Professionals, Local 5082 ("UNAP"), hereby petitions the Rhode Island Department of Health (the "Department") for a declaratory ruling, pursuant to Section 18 of the Rules and Regulations Pertaining to Practices and Procedures Before the Rhode Island Department of Health, R42-35-PP, regarding the proposed elimination of primary care services at Memorial Hospital of Rhode Island ("MHRI") at variance with conditions imposed pursuant to the Rhode Island Hospital Conversion Act ("HCA"), R.I. Gen. Laws §23-17.14-1 *et seq.*, and at variance with applicable regulations set forth herein.

**Parties**

1. UNAP is a non-profit corporation organized under the laws of Rhode Island and having its principal place of business located at 375 Branch Avenue, Providence, Rhode Island.
2. UNAP is a party to a collective bargaining agreement which provides the terms and conditions of employment for registered nurses at MHRI, including those employed in the obstetrical services unit.
3. UNAP participated in the HCA proceedings pursuant to which Care New England Health Systems ("CNE") was allowed to affiliate with MHRI.
4. The employees represented by UNAP relied upon the conditions imposed pursuant to the HCA which is designed, in part, to incent commitments by the Transacting Parties to retain workforce.

13. This Petition for Declaratory Ruling is of critical significance to the Department regarding the import of conditions imposed pursuant to the HCA.

14. By the terms of the decision rendered by the Department pursuant to the HCA, dated June 26, 2013 (the "HCA Decision"), the conditions imposed by the HCA Decision are also conditions imposed upon and incorporated into the hospital licensure for MHRI.

15. MHRI was licensed, after HCA and a "change in effective" control proceedings, as an acute-care community hospital.

16. Recently, MHRI has made announcements that, in essence, terminate MHRI's participation in the community as an acute-care community hospital.

17. In so doing, the Transacting Parties have completely ignored binding conditions that CNE fund MHRI's operational shortfalls through September, 2016, and that CNE maintain primary care services in place at MHRI with the exception of cardiac catheterization and certain medical imaging services in order to maintain a "balanced healthcare delivery system" in a defined community with specific characteristics and needs.

18. Accordingly, the Transacting Parties have unilaterally, knowingly and willfully chosen to ignore such binding conditions and applicable regulations cited below, by announcing the elimination of primary care services and taking substantive steps in implementing that announcement.

19. Thus, UNAP seeks a declaratory ruling on the following issues in dispute:

- a. Whether the conditions imposed by the Department pursuant to the HCA Decision are binding upon the Transacting Parties;

additional proceedings mandated by the violation of conditions imposed upon the Transacting Parties and MHRI's licensure.

### **Factual Background**

20. In the HCA Decision, the Department noted that MHRI is a 294-bed acute-care community hospital serving a core service area with higher social deprivation measures as compared to other areas in the State of Rhode Island.

21. The Department in the HCA process ruled that MHRI was a distressed Rhode Island hospital facing significant financial hardship that may impair its ability to continue to operate effectively absent the proposed conversion.

22. On or about June 26, 2013, the Department rendered the HCA Decision.

23. The affirmative HCA Decision was based upon a "balanced healthcare" rationale.

24. The HCA Decision described a "balanced healthcare delivery system" as one that could be characterized as providing an optimal mix of primary and specialty services within a defined geographical area. Such a system would enable patients to receive care in their own communities.

25. In making the ruling based upon a balanced healthcare rationale, the HCA decision specifically stated:

Care New England has committed to maintain services presently in place at Memorial Hospital, with the exception of the cardiac catheterization and some medical imaging services. Care New England represented that these services will be available at other hospitals within the Care New England system to residents in the Memorial Hospital service area.

*See HCA Decision at. 64.*

33. Notwithstanding, on or about February 29, 2016, CNE and MHRI announced their intention to eliminate services, including obstetrics services currently offered at MHRI.

34. This announcement, in short, means that MHRI will no longer be an acute-care community hospital.

35. The Transacting Parties are, in fact, eliminating primary care services and CNE is no longer committed to funding operational shortfalls through September, 2016.

36. In addition to violating the conditions imposed by the HCA Decision, primary care services cannot "be eliminated or significantly reduced without prior approval of the Director".

37. Notwithstanding, UNAP submits that the Director cannot consider such an elimination or significant reduction until September of 2016, at the earliest.

38. Prior to any submission to the Director, on or about February 23, 2016, providers were told by CNE that they were to forward their obstetrical patient's medical records to Woman & Infants Hospital (W&I) and that CNE would be drafting letters to said patients informing them that they would have to deliver at W&I.

39. On or about March 1, 2016, subsequent to the public announcement regarding the elimination of services and prior to any submission to the Director, MHRI staff were informed that the last patient for obstetrics services would be admitted on March 10, 2016 and the floor would be closed on March 14, 2016.

40. On or about March 3, 2016, staff were informed that the last patient would be admitted on March 14, 2016 and the floor would close on March 17, 2016.

41. On or about March 4, 2016, staff were informed that the floor would close on March 18, 2016.

50. On or about March 3, 2016, counsel for UNAP provided a public records request to the Department, seeking any communications and/or documents relative to the planned elimination of obstetrics services at MHRI. *See a copy of the correspondence attached hereto as Exhibit B.*

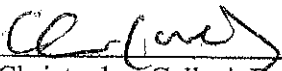
51. On or about March 3, 2016, counsel for UNAP also provided written correspondence to Michael Dexter, as Chief of the Center for Health Systems Policy & Regulation of the Rhode Island Department of Health, outlining the information provided above and requesting the following relief:

- a. That a licensure hearing be held with proper notice and an opportunity to be heard, pursuant to Section 21 of R42-35-PP;
- b. That the Director of the Department of Health issue a cease and desist order prohibiting MHRI from continuing to pursue the following actions:
  - i. Refusing to admit patients to the obstetrics services unit as of March ~~14~~10, 2016;
  - ii. Closing the floor as of March 14, 2016; and
  - iii. Laying off registered nurses currently serving the obstetrics services unit; and
- c. That a hearing be held pursuant to Section 14 of R23-17.14-HCA. *See a copy of the correspondence attached hereto as Exhibit C.*

52. On or about March 9, 2016, the Department provided notice that a public hearing had been scheduled in regard to the MHRI's elimination of obstetrics services to be held on March 14, 2016. Therefore, UNAP and any other interested parties were provided with five (5) days notice of the hearing.

WHEREFORE, United Nurses and Allied Professionals respectfully request that the Department set this matter down for hearing on an expedited basis and at the conclusion thereof, provide relief as follows:

- a. A declaration by the Department, pursuant to, and in accord with, Section 18 of R42-35-PP, that the conditions imposed by the HCA Decision are binding upon the Transacting Parties and that the parties may not take actions at variance with said conditions;
- b. A declaration by the Department, pursuant to, and in accord with, Section 18 of R42-35-PP, that the HCA Decision and the conditions incorporated therein became conditions upon the MHRI License at the time said license was granted by the Department, and CNE and MHRI may not take actions at variance with said conditions;
- c. A declaration by the Department, pursuant to, and in accord with, Section 18 of R42-35-PP, that CNE and MHRI are obligated to comply with the HCA Decision and the conditions contained therein, including requiring CNE to fund operational shortfalls through September of 2016 and preventing CNE from eliminating primary care services at MHRI within the first three (3) years after the HCA Decision;
- d. A declaration by the Department, pursuant to, and in accord with, Section 18 of R42-35-PP, that the written plan submitted on behalf of CNE cannot be accepted as complete in accordance with Section 10.1.2 of the Rules and Regulations Pertaining to Hospital Conversions, as it fails, *inter alia*, to address any of the conditions contained within the HCA Decision and binding upon CNE and MHRI;

  
Christopher Callaci, Esq.  
United Nurses and Allied Professionals  
375 Branch Avenue  
Providence, RI 02903  
Tel.: (401) 831-3647  
E-mail: ccallaci@unap.org

United Nurses and Allied Professionals  
By its Attorneys,

  
W. Mark Russo (#3937)  
**FERRUCCI RUSSO P.C.**  
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Providence, RI 02903  
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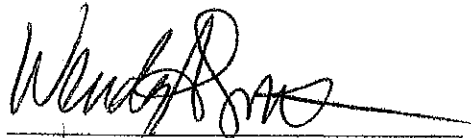
Dated: March 11, 2015

**CERTIFICATION OF SERVICE**

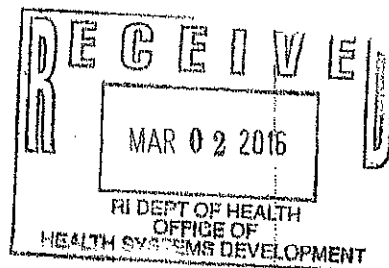
I hereby certified that on this 11<sup>th</sup> day of March, 2016, I filed and serve this document on the following parties via first class mail:

Diana Wantoch  
Memorial Hospital of Rhode Island  
111 Brewster Street  
Pawtucket, RI 02860

Alyssa V. Boss  
Care New England Health System  
45 Willard Avenue  
Providence, RI 02905



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March 2, 2016

Michael K. Dexter, Chief  
Center for Health Systems Policy and Regulation  
Rhode Island Department of Health  
Three Capitol Hill, Room 410  
Providence, Rhode Island 02908-5097

Re: Memorial Hospital Inpatient Obstetrical Service

Dear Mr. Dexter:

Memorial Hospital of Rhode Island ("MHRI") is hereby advising the Department of Health that it intends to cease providing inpatient obstetrics services at MHRI and will relocate those services to its licensed hospital affiliates, Women & Infants Hospital ("W&I") and Kent County Memorial Hospital ("Kent"), at the earliest opportunity.

To the extent inpatient obstetrics is considered to be a primary care service under section 23-17.14-18 of the Rhode Island General Laws, the following information addresses section 10.1.2 of the Rules and Regulations Pertaining to Hospital Conversions:

- (a) MHRI currently provides inpatient obstetric services at its Pawtucket location. During fiscal year 2015, there were 446 births at MHRI. This volume of births can be accommodated at CNE's alternative sites for inpatient obstetrics, W&I and Kent. There were 8,948 births in fiscal year 2015 at the former against a capacity of 10,000 and 852 births at the latter during the same period against a capacity of at least 1500.
- (b) As is the case with inpatient hospital services generally, inpatient obstetrics services are available at MHRI 24/7. These hours are also maintained at W&I and Kent.
- (c) Qualified employees currently staffing the inpatient obstetrics unit at MHRI will have the opportunity to apply for vacant positions that are currently being held open across CNE. Depending on need, CNE is willing to create educational/training opportunities for displaced staff as well. Once the staffing plan is finalized, CNE will do its best to match affected employees with desired positions. Nevertheless, it is expected that there will be a reduction of force of some magnitude associated with the closure of the MHRI inpatient obstetrics unit.

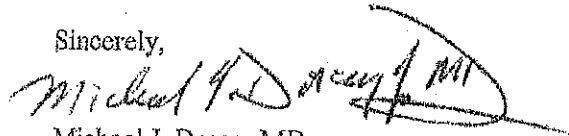


(3) W&I and Kent will each experience increased demand for inpatient obstetrics services but, as noted in (a) above, each hospital has the capacity to address the modest increases anticipated.

(4) Except as noted in (i) (3), no significant impact is expected on other hospitals or health care providers elsewhere in the state.

If you have any questions, please call.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Dacey, MD". The signature is stylized with a large, sweeping "M" and "D".

Michael J. Dacey, MD  
President, Memorial Hospital of  
Rhode Island



PUBLIC RECORDS REQUEST FORM  
UNDER THE ACCESS TO PUBLIC RECORDS ACT

Date 3/3/16  
Name (optional) Christopher Callaci, Esq.  
Address (optional) 375 Branch Avenue  
Providence, RI 02903  
  
Telephone (optional) \_\_\_\_\_  
E-Mail Address (optional) ccallaci@unap.org  
Requested Records: See attached letter dated March 3, 2016  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Forward this document to the  
Department of Health - ATTN: Kimberly McNulty  
Office of Legal Services, Room 404  
Three Capitol Hill, Providence RI 02908  
Fax: (401) 222-1797*

If, after review of your request, the Department determines that the requested records are exempt from disclosure for a reason set forth in the Access to Public Records Act, the Department reserves its right to claim such exemption.

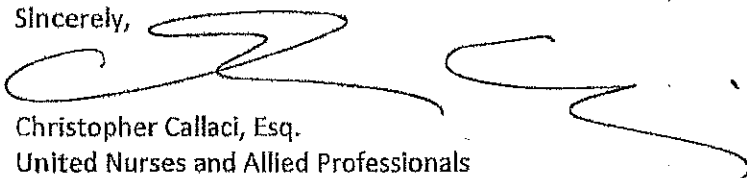
Note: If you choose to pick up the records, but did not include identifying information on this form (name, etc.), please contact Kimberly McNulty at (401) 222-1036 with the date you made the request and the records requested.

**OFFICE USE ONLY**

Request taken by: \_\_\_\_\_ Request Assigned to: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Records to be available on: \_\_\_\_\_ Mail \_\_\_\_\_ Pick Up \_\_\_\_\_  
Records provided: \_\_\_\_\_  
Costs: \_\_\_\_\_ copies \_\_\_\_\_ search and retrieval

initial inspection on or prior to March 4, 2016. If additional time is needed to assemble all of the documents for inspection, then any plan submitted pursuant to Section 10 of R23-17.14-HCA should be readily available. Moreover, we would like confirmation as to whether such a plan has been submitted by either of the Subject Hospitals has been made to the Department of Health as soon as possible.

Sincerely,



Christopher Callaci, Esq.  
United Nurses and Allied Professionals

cc: Nicole Alexander-Scott, MD, MPH, Director, Rhode Island Department of Health (*via Hand Delivery*)  
Rhode Island Department of Health, Office of Legal Counsel, Suite 403, 3 Capitol Hill,  
Providence, RI 02908  
Lisa Pinsonneault, Special Assistant Attorney General, 150 South Main Street,  
Providence, RI 02903

**United Nurses &  
Allied Professionals**

Linda McDonald, RN  
President



March 3, 2016

**Sent Electronically**

Michael.Dexter@health.ri.gov

Mr. Michael K. Dexter, Chief  
Center for Health Systems Policy & Regulation  
Rhode Island Department of Health  
Three Capitol Hill, Room 410  
Providence, RI 02908-5097

**RE: Memorial Hospital Inpatient Obstetrical Services**

Dear Mr. Dexter:

I am writing to provide an initial response to the letter Mr. Dacey, MD, submitted yesterday on the above subject matter.

First of all, the Memorial Hospital of Rhode Island/Care New England Affiliation is the product of a Hospital Conversion proceeding pursuant to R.I. Gen. Laws §23-17.14 *et seq.* Therefore, the terms and conditions of the HCA Decisions rendered by the Rhode Island Department of Health and the Rhode Island Department of Attorney General are incorporated as terms and conditions upon the license for Memorial Hospital of Rhode Island. In that regard, the HCA Decision rendered by the Rhode Island Department of Health sets forth the following:

- At page 18 of the Decision, it incorporates as a finding that Care New England does not contemplate the elimination of any clinical services during the first three years of the formation of the new hospital.
- At page 46 of the Decision, there is a section entitled "Elimination of Clinical Services". It states that as a result of the Affiliation, Care New England does not contemplate the elimination of any clinical services during the first three years of the formation of the new hospital. However, it does say that certain specialty services, provided elsewhere in the State will be phased out over time. Obstetric services in the service area for MHRI are not listed. In fact, specific specialty services are set forth in Appendix D to the Application.

Mr. Michael K. Dexter, Chief  
March 3, 2016  
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In addition Section 10.1 of §23-17.14-HCA regulations provide in part that "no primary care service shall be eliminated or significantly reduced without prior approval of the Director." Notwithstanding, MHRI has notified the staff that the last patient will be admitted on March 10, 2016 and that the floor will be closed on March 14, 2016. CNE has also informed the staff that they will be getting layoff notices on March 7, 2016. Thus, MHRI is eliminating the service well before receiving "prior approval of the Director" in direct violation of State law.

Also, in light of the HCA citations above, there is no way that Mr. Dacey's so-called plan could be deemed complete and adequate for review by the Director.

I respectfully request, on behalf of the registered nurses who work on that floor and are members of the United Nurses & Allied Professionals, Local 5082, that the Director issue a cease and desist order prohibiting MHRI from 1) refusing to admit any more patients beyond March 10, 2016, 2) closing the floor on March 14, 2016 and 3) laying off the registered nurses and other staff who work on the floor.

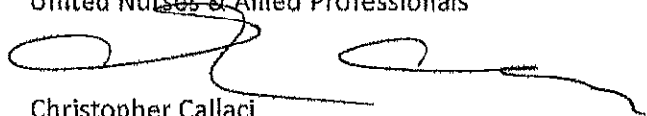
In the absence of such an order, the Department will effectively be allowing MHRI to advance a continuing violation of the statutory and regulatory mandates prohibiting closure of such services prior to approval by the Director.

Finally, we respectfully submit that there has been a violation. Thus, we request on behalf of the registered nurses that I represent that a hearing be held pursuant to Section 14 of R23-17.14-HCA in conjunction with the licensure hearing we request above.

Time here is of the essence. The interests of staff, patients and their families are squarely in issue here. A prompt response, therefore, will be appreciated. Thank you for your timely consideration.

Respectfully

United Nurses & Allied Professionals



Christopher Callaci  
General Counsel

cc: Nicole Alexander-Scott, MD, MPH, Director, Rhode Island Department of Health Suite 401,  
3 Capitol Hill, Providence, RI 02908 (sent electronically - Rita.Menard@health.ri.gov)